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(to be used for all correspondence after initial filing)		10/680,541				
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		September 7, 2003				
		First Named Inventor				
		Matthew Levinson				
Group Art Unit		1751				
Examiner Name		John R. Hardee				
Attorney Docket Number		1895 - 15132US06				
Total Number of Pages in This Submission		16				
ENCLOSURES (check all that apply)						
<table border="1"><tr><td><input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input checked="" type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO 1449/08A with references <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53</td><td><input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) (        sheets) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD Number of CD(s) _____</td><td><input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):</td></tr></table>				<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input checked="" type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO 1449/08A with references <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) (        sheets) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT						
Firm or Individual Name	McAndrews Held & Malloy, Ltd.					
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Signature			Date: June 16, 2004			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: **Matthew Levinson** )  
Serial No. **10/680,541** )  
Filed: **September 7, 2003** )  
For: **ARTICLES AND METHODS FOR** )  
**TREATING FABRICS BASED ON** )  
**ACYLOXYALKYL** )  
**QUATERNARY AMMONIUM** )  
**COMPOSITIONS** )  
Examiner: **John R. Hardee** )  
Art Unit: **1751** )

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as express mail in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria VA, 22313-1450 on June 16, 2004.

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By: \_\_\_\_\_

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Commissioner of Patents  
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REPLY UNDER 37 CFR §1.111

Sir:

REMARKS

In response to the Official Action of March 31, 2004 (the "Official Action"), for which a reply is due on June 30, 2004, Applicant respectfully requests consideration on the merits of the following remarks and attached 37 C.F.R. §1.132 Declaration of Matthew Levinson, Ph.D. The Applicant respectfully submits that the Levinson Declaration shows unexpected results in rebuttal of the Patent Office's previous rejection based on alleged obviousness of the pending claims in light of DE OS 3,818,013 ("the Voelkel reference").

**Summary of the Bases of Rejection**

Claims 1, 3-5, 12-15, and 17-19 were rejected in the Official Action under 35 U.S.C. §103(a) as being allegedly unpatentable over the Voelkel reference. On March 4,

2004, prior to the Official Action, the Applicant and his attorney had an interview with the Examiner at the offices of the U.S.P.T.O. At that time, a rejection based on the Voelkel reference was maintained from the parent case, but a rejection based on U.S. Patent No. 5,503,756 (“the Corona reference”), was withdrawn. The Examiner suggested that he would reconsider the rejection under Voelkel in the event that Applicant re-submitted a showing of unexpected results over the exact formulation disclosed in Example 1 of Voelkel. The Applicant thanks the Examiner again for his time, and believes that the attached declaration and following remarks address the Examiner’s remaining obviousness rejection regarding the Voelkel reference.

The Patent Office alleges that the Voelkel reference discloses a flexible substrate impregnated with a fabric softening composition for use in a dryer, and that the substrate may be of paper, non-woven cloth or sponge, with a ratio of softener to substrate of 10:1 to 1:3 by weight. [Official Action at p. 2]. The Patent Office further alleges that the composition has a softening point of 30-60 degrees C, and that the composition preferably comprises a quaternary ammonium compound bearing two acyloxylalkyl groups of 10-22 carbons. *Id.* The Patent Office asserts that Example 1 of Voelkel exemplifies the use of 20% of glycerol monostearate and 40% of dimethyldi(oleoylisopropyl)-ammonium methosulfate in a softener-to-substrate ratio of 86:35, and that glycerol monostearate is well known in the surfactant art to be a mixture of mono-, di- and triesters of glycerol and stearic acid. [Official Action at p. 3]. Thus, the Patent Office further asserts that it would have been obvious for one of ordinary skill in the art to substitute glycerol for a portion of the glyceryl monostearate components of Applicant’s instant technology, because the disclosure of those compounds together in the Voelkel reference allegedly suggests a general equivalence between them. To these assertions, Applicant respectfully disagrees.

### **Unexpected Results**

“A prima facie case of obviousness based on structural similarity is rebuttable by proof that the claimed compounds possess unexpectedly advantageous or superior properties.” M.P.E.P. §2144.09, citing *In re Papesch*, 315 F.2d 381 (C.C.P.A. 1963) (Affidavit evidence which showed that claimed triethylated compounds possessed anti-

inflammatory activity whereas prior art trimethylated compounds did not was sufficient to overcome obviousness rejection based on the homologous relationship between the prior art and the claimed compounds.).

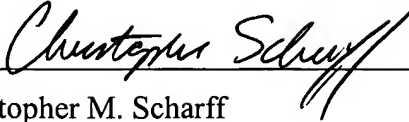
As shown in the attached 37 C.F.R. §1.132 Declaration of Matthew Levinson, Ph.D., the claims of the instant invention concern articles of manufacture that contain a fabric conditioning composition that produces little or no “box bleed.” Box bleed is the melting or transfer of the fabric softener or conditioning material embedded in the dryer sheet substrate onto the box in which the fabric softening dryer sheets are packaged and sold to the consumer. The lack of box bleed is an important and unexpected characteristic of the claimed invention. Box bleed is an extremely undesirable characteristic from the consumer point of view. *See* Levinson Declaration at p. 3.

As discussed by Dr. Levinson, dryer sheets were made using compositions taught by Voelkel in Example 1 and evaluated in a test designed to measure box bleed. Dr. Levinson further explains that dryer sheets were also made using formulations based on Example 5 of the instant application and tested for box bleed in the same manner as the Voelkel compositions, in particular Example 1.

The box bleed tests and the results flowing from those tests are summarized in Section D of Dr. Levinson’s Declaration. The composition prepared according to Voelkel Example 1 produced a significant level of box bleed, 29.42%. *See* Levinson Declaration, Table 2. Quite surprisingly, however, compositions made according to the instant invention produced virtually no box bleed (less than 0.015%). *Id.* Dr. Levinson explained in his declaration that the lack of box bleed using the instant invention is surprising in view of the results produced using the prior art formulations disclosed in the Voelkel reference.

The Applicant respectfully submits that the claims of the instant application, in view of the significant showing of nonobviousness in view of Dr. Levinson’s Declaration, are not rendered obvious by the Voelkel reference. Accordingly, withdrawal of the §103 rejection of the pending claims is respectfully requested by the Applicant.

Respectfully Submitted,



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